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SCL Health, St. James Medical Group, Rocky Mountain Clinic and Montana Nurses Association.
Case 19–CA–242468

February 12, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND
EMANUEL

This is a refusal-to-bargain case in which the Respondent, SCL Health, St. James Medical Group, Rocky Mountain Clinic, is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 29, 2019, by the Montana Nurses Association (the Union), the General Counsel issued the complaint on August 9, 2019, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 19–RC–233533. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting an affirmative defense.

On August 26, 2019, the General Counsel filed a Motion for Summary Judgment. On August 29, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response to the Notice to Show Cause and corresponding exhibits. The General Counsel filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the certification was improper because the unit is inappropriate.¹

¹ The Respondent's answer denies those portions of the complaint that set forth the appropriate unit or assert that the Union is the unit employees' exclusive collective-bargaining representative. The Respondent's affirmative defense similarly asserts that the certification was issued without basis, is contrary to law, and is not valid and enforceable because the bargaining unit is not an appropriate unit. The unit issue, however, was fully litigated and resolved in the underlying representation proceeding, and the certification is therefore valid. Accordingly, the Respondent's denial of the appropriateness of the unit does not raise any litigable issues in this proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a State of Montana corporation with an office and place of business in, among other places, Butte, Montana, where it is engaged in the business of providing health care services. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$250,000 and purchased and received at its Butte, Montana facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Montana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

At all materials times the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or acting as agents of the

Additionally, in its response to the notice to show cause, the Respondent argues that *Boeing Co.*, 368 NLRB No. 67 (2019), issued after the unit was certified, supports the Respondent's contention that the unit was inappropriate. Because the issuance of that case did not create any new issues here, we find that the Respondent has not established special circumstances warranting reconsideration of the Board's decision in the underlying representation proceeding.

² Member Emanuel did not participate in the underlying representation proceeding. He expresses no opinion on the merits of the Board's decision in that proceeding. Nevertheless, he agrees with his colleagues that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

Respondent within the meaning of Section 2(13) of the Act, acting on the Respondent's behalf:

JP Valin, MD	-	Chief Clinical Officer
Scott Baker	-	COO
Kristin Chiamulera	-	Clinical Manager
Tom Moser	-	VP of Operations
Unnamed Agent	-	Outside Counsel
Heidi Saunders	-	Director of HR

Following the representation election held on February 14, 2019, the Union was certified on February 22, 2019, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, part-time, and per-diem registered nurses employed by Respondent at its clinics located at 435 S. Crystal Street, 305 W. Porphyry Street, and 1300 W. Park Street in Butte, Montana; excluding all other employees, guards and supervisors as defined by the Act.

On July 26, 2019, the Board denied the Respondent's request for review of the Union's certification. The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

On April 18 and May 8, 2019, by email, the Union requested that the Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. Since about May 8, 2019, the Respondent, by email from its unnamed agent listed above, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing, since May 8, 2019, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Un-

ion and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, SCL Health, St. James Medical Group, Rocky Mountain Clinic, Butte, Montana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Montana Nurses Association (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time, part-time, and per-diem registered nurses employed by Respondent at its clinics located at 435 S. Crystal Street, 305 W. Porphyry Street, and 1300 W. Park Street in Butte, Montana; excluding all other employees, guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facilities in Butte, Montana, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are cus-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tomarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 8, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 12, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the Montana Nurses Association (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time, part-time, and per-diem registered nurses employed by Respondent at its clinics located at 435 S. Crystal Street, 305 W. Porphyry Street, and 1300 W. Park Street in Butte, Montana; excluding all other employees, guards and supervisors as defined by the Act.

SCL HEALTH, ST. JAMES MEDICAL
GROUP, ROCKY MOUNTAIN CLINIC

The Board's decision can be found at <https://www.nlr.gov/case/19-CA-242468> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

